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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,297	01/14/2002	David J. Drahos	DRAHOS-CIP	7642

7590 11/21/2003
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EXAMINER

MARX, IRENE

ART UNIT PAPER NUMBER

1651

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/043,297	DRAHOS ET AL.	
	Examiner	Art Unit	
	Irene Marx	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

The election without traverse filed 11/4/03 is acknowledged. Claims 16-18 are being considered on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 is confusing in the recitation of “enhancing biofungicidal activity of a microbial agent” without an indication of the locus of application: is it a table, leather, a plant, a human, another animal, an insect? Claim 17 suggests that a plant is intended. In addition there is no clear indication whether or not the locus applied requires treatment or whether or not a fungicidal agent is in fact produced. The claim only requires that the microorganism be capable of producing a fungicidal agent.

Also the claim is confusing in that the correlation between “a nutrient formulation” and “biofungicidal activity” is uncertain. It is provided at the time of culturing or at the time of applying, for example. The nature of the “microbial agent” cannot be readily determined in this context.

It is recommended that consistency be maintained to recite either “biofungicidal” or “fungicidal”.

Claim 17 is vague indefinite and confusing in the recitation of “a preservative” for an unknown agent as well as of an optional “biosupplement”. The term “a” appears to be missing prior to nontoxic.

Claim 17 is confusing in that it is unclear whether all of the ingredients recited in claim 17 should be present in the formulation or just one. The material intended is unclear in this context.

Claim 18 is vague, indefinite and confusing in the recitation of 710-140 and of SB3086. There is no clear indication regarding the nature of the intended materials. If the strain recited in claim 1 is intended, it should be appropriately identified..

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Urano *et al.*.

The claims are drawn to a method of enhancing biofungicidal activity of a microbial agent by applying a microorganisms with a nutrient formulation, in particular “710-140” without SB3086.

The reference discloses a method of enhancing biofungicidal activity of a microbial agent by applying a microorganisms with a nutrient formulation comprising chitin, which is at least a surfactant and could be considered a plant nutrient, preservative and/or biosupplement at least to some extent (See, e.g., Example 3, wherein the strain and the culture medium are mixed with chitin) which material was applied to a pot for plants. There is no clear disclosure of using “710-140”. However, the nature of this composition is not identified with sufficient particularity in the claims. Moreover, the material appears to be free of SB3086.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Handelsman *et al.*.

The claims are drawn to a method of enhancing biofungicidal activity of a microbial agent by applying a microorganisms with a nutrient formulation, in particular “710-140” without SB3086.

The reference discloses a method of enhancing biofungicidal activity of a microbial agent by applying a microorganisms with a nutrient formulation comprising methyl cellulose, which is at least a surfactant and could be considered a plant nutrient, preservative and/or biosupplement at least to some extent. See, e.g., Example 1. In Example 2, the strain and a trypticase soy culture medium are mixed with seeds. There is no clear disclosure of using “710-

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140". However, the nature of this composition is not identified with sufficient particularity in the claims. Moreover, the material appears to be free of SB3086.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is 703-308-2922. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0926.



Irene Marx
Primary Examiner
Art Unit 1651